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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2003-01:
SAGEBRUSH POWER PARTNERS, LLC;
KITITAS VALLEY WIND POWER PROJECT

APPLICANT'S OBJECTIONS AND MOTION
TO STRIKE PREFILED TESTIMONY

THIS IS A MOTION made by the Applicant herein to strike portions of certain pre-filed testimony submitted by some parties to the proceeding. In making this Motion to Strike, the Applicant intends to make a record of its objections to certain testimony filed by the parties to these proceedings to ensure that the record is clear for potential future judicial review. However, the Applicant understands that in this context of an administrative proceeding, the Council may choose to deny motions to strike, and consider the applicability of certain objections in according weight to the testimonial evidence.

The Applicant hereby objects to and moves to strike portions of the following pre-filed testimony:

1. Exhibit 50 (CW-T), Kittitas County Response Testimony, Witness #1: Clay White:

a. The following language located on Page 20, Lines 18-20:

"I could not help but think that he did it on purpose."

APPLICANT'S MOTION TO STRIKE
PRE-FILED TESTIMONY

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1 The basis for the objection is speculation on behalf of the witness and it is
2 argumentative, in violation of Washington State Rules of Evidence, specifically ER
3 403 and ER 602.

4
5 b. The following language located on Page 22, Lines 23-25:

6 “The only conclusion I can draw is that this was their strategy from day one and they
7 had no intention of going through the County process as prescribed by law.”

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9 The basis for the objection is speculation on behalf of the witness and it is
10 argumentative, in violation of Washington State Rules of Evidence, specifically ER
11 403 and ER 602.

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13 c. The following language located on Page 41, Lines 3-4:

14 “The tactics they took made it very apparent to me that they had never planned to
15 discuss proceeding with the County and had planned to file for preemption all along.”

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17 The basis for the objection is speculation on behalf of the witness and it is
18 argumentative, in violation of Washington State Rules of Evidence, specifically ER
19 403 and ER 602.

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21 2. Exhibit 101 (DT-1), Intervenor F. Steven Lathrop’s Pre-filed Direct Testimony, Witness
22 101, Dave Taylor:

23
24 The following language located on Page 4, Line 21, through Page 5, Line 3:

1 “The Growth Management Act was passed with the premise it would provide
2 “bottom up” planning, that is direct and active public involvement through the
3 planning process. The GMA promised coordinated planning and included a
4 provision requiring State Agencies to comply with local comprehensive plans and
5 development regulations. The Legislature did not exempt any State Agencies,
6 including EFSEC, from this requirement. With the passage of the Growth
7 Management Act, EFSEC’s ability to preempt local comprehensive plans and
8 development regulations became void. In other words, because the GMA requires
9 State Agencies to comply with local comprehensive plans and development
10 regulations and Kittitas County has development regulations pertaining to Wind
11 Power Facilities, EFSEC is barred from preempting the County’s development
12 regulations.”
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14
15 The basis for this objection is that the witness’ statement is stating a conclusion of
16 law. A witness is not allowed to state conclusions of law. This conclusion of law as
17 stated by the witness is without foundation and relates to ultimate legal question
18 regarding EFSEC’s jurisdiction in this case. The testimony is also it is argumentative,
19 in violation of Washington State Rules of Evidence, specifically ER 403 and ER 602.
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- 21 3. Exhibit 102R (DT-R), Intervenor F. Steven Lathrop’s Pre-filed Rebuttal Testimony,
22 Witness # 102, David Taylor:
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1 The Applicant moves to strike all of the testimony put forth in this exhibit on the
2 basis that it is improper rebuttal testimony. This testimony is in violation Council
3 Order No. 790, Prehearing Order No. 8, which provides as follows:

4 “Pre-filed rebuttal testimony shall be limited to witness statements and related
5 information that is responsive to other existing pre-filed testimony *or* which can
6 otherwise be shown as relevant to the proceeding and the need for which could
7 not have been reasonably foreseen prior to July 6, 2004, the deadline for filing of
8 all Parties’ pre-filed testimonies.”
9

10
11 The entirety of this testimony relates to the direct testimony of the Applicant filed
12 on May 24, 2004, all of which was clearly known prior to the filing of the party’s
13 pre-filed testimony on July 6, 2004. This Exhibit states on its face on Page 2,
14 Line 1-2, that the purpose of the testimony was to rebut the pre-filed testimony
15 previously filed with EFSEC by the Applicant. Not only is this in violation of
16 Council No. 790, Prehearing Order No. 8, but is contrary to common
17 jurisprudential practices of orderly presentation of evidence and EFSEC’s
18 previous ruling on the matter in the prehearing conference held July 19, 2004.

19 Rebuttal witnesses are limited to new matters presented.
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22 4. Exhibit 110R.0, Intervenor ROKT’s Rebuttal Testimony, Witness #1, Ed Garrett:

23 a. The Applicant moves to strike all of the testimony put forth in this exhibit
24 commencing on Page 1, Line 21, through Page 9 line 19, on the basis that it is
25 improper rebuttal testimony.

1
2 This testimony is in violation Council Order No. 790, Prehearing Order 8,
3 which provides as follows:

4 “Pre-filed rebuttal testimony shall be limited to witness statements and
5 related information that is responsive to other existing pre-filed testimony
6 *or* which can otherwise be shown as relevant to the proceeding and the
7 need for which could not have been reasonably foreseen prior to July 6,
8 2004, the deadline for filing of all Parties’ pre-filed testimonies.”
9


10
11 The entirety of this testimony relates to the direct testimony of the Applicant filed
12 on May 24, 2004, all of which was clearly known prior to the filing of the party’s
13 pre-filed testimony on July 6, 2204. Not only is this in violation of the Council
14 No. 790, Prehearing Order No. 8, but is contrary to common jurisprudential
15 practices of orderly presentation of evidence, and EFSEC’s previous ruling on the
16 matter in the prehearing conference held July 19, 2004.
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19 b. The Applicant moves to strike all of the testimony put forth in this exhibit
20 commencing on Page 9, Line 20, through Page 11 line 2, on the basis that it is
21 improper rebuttal testimony.

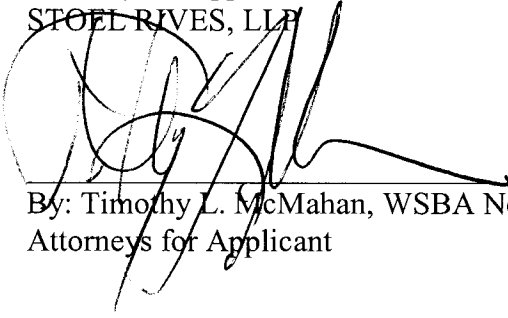
22
23 This testimony is not proper rebuttal, but is more of the nature of “friendly
24 rebuttal”. His testimony is essentially in agreement with Mr. Bevis’
25 allegations together with a statement that the wildlife studies conducted for

1 the Applicant by WEST were inadequate. This is not “rebuttal” in any
2 evidentiary context. There is nothing in this testimony establishing a
3 foundation that Mr. Bevis’ testimony provided new information to him (Mr.
4 Garrett) regarding his opinions as to the adequacy of the wildlife studies
5 conducted by WEST for the Applicant. In essence, his testimony rebuts
6 nothing about Mr. Bevis’ testimony.
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9 DATED this 3rd day of August, 2004

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11 
12 Darrel L. Peebles, WSBA No. 885
Attorney for Applicant
STOEL RIVES, LLP

13 DATED this 3rd day of August, 2004

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15 By: Timothy L. McMahan, WSBA No. 16377
16 Attorneys for Applicant
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